Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-5693

DANIEL ROSS,

Petitioner

vs.

KAYE BYRD, et al.,

Respondent

PETITIONER'S COUNTER BRIEF

[illegible], pro se
Franklin County
Post Office 155
Bunn, North Carolina 27508

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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-5693

DANIEL ROSS,

Petitioner

Vs.

KAYE BYRD, et al.,

Respondents

COUNTER
RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO REVIEW A DECISION OF THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

CITATIONS TO OPINION BELOW

Petitioner adopts respondents' citations to opinion below as if set forth in the original petition, respondents' response and this counter response.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. 1343.

QUESTIONS PRESENTED

I. WHETHER THIS CASE IS RIPE FOR DISCRETIONARY REVIEW BY THIS COURT?

II. WHETHER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION IS APPLICABLE TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA?

III. WHETHER ROSS IS ENTITLED TO INSPECT HIS PRISON FILE IN ORDER TO ASSURE THAT IT CONTAINS NO ERRONEOUS INFORMATION?

CONSTITUTIONAL PROVISIONS

Petitioner's allegations raise questions involving the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE AND FACTS

Except respondents' contention in their opening assertion Ross does not allege that any particular information contained in his file is or might be incorrect. The same is negated, petitioner adopts respondents' statement of the case and facts.

INTRODUCTORY STATEMENT

Respondent in its introductory statement attempts dishonor to impress this Honorable Court by asserting in an opening statement, before responding to the legal issues raised by Ross' Petition, we feel compelled to briefly reply to his indictment of the parole process in North Carolina. From his petition, one might conclude that he and others similarly situated have no knowledge of parole criteria or the reasons for parole denial. Actually, the North Carolina Parole Commission's investigative process is a very thorough one.

Responding to respondent's introductory statement this Honorable Court has had an occasion to become well familiar with the State of North Carolina in her attempts to dishonor the firm guidance of this and other courts wherein this Honorable Court in Hankerson v. North Carolina, 432 U.S. 233 (1977) stated:

> Moreover, we are not persuaded that the impact on the administration of justice in those States that utilize the sort of burden-shifting presumptions involved in this case will be as devastating as respondent asserts. If the validity of such burden-shifting presumptions was as well settled in the States that have them as respondents asserts, then it is unlikely that prior to Mullaney many defense lawyers made appropriate objections to jury instructions in corporating those presumptions. Petitioner made none here. The North Carolina Supreme Court passed on the v alidity of the instructions any way.

Un lex talionis, petitioner will not throw a stone for a stone and will suspend his opinion as matters not germane to adjudicating the gist of the petition. With this in mind in raising from a dead level of a shadow grave to a true living perpendicular on the square, it is, respectfully submitted that if actually, the North Carolina Parole Commission's investigative process is as thorough one as respondent asserts, then respondent should have no objection to furnishing information in petitioner's parole file, however opposes, hence respondent's premises non se quitur.

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1. Petitioner's contention in the original petition is that considering the probability of undue burden or expense by providing prisoners access to information in their parole files, in the absence of fairness, consideration is non-existence.

ARGUMENT

I. THIS CASE IS RIPE FOR DISCRETIONARY REVIEW BY THIS COURT.

Respondent's contention is that this case is not ripe for discretionary review by this Court and it entitles respondent to no relief. Respondent's contention is unmeritorious for a number of procedural and substantive reasons. First, the question of petitioner's parole eligibility date was not raised and passed upon by the lower courts. See Ross v. Byrd, No.78-317-CRT (E.D.N. C., July 7, 1978) and Ross v. Byrd, No. 78-6449 (formerly Misc. No. 78-8296)(4th Cir. 1978). Neither the district court nor the circuit court has passed upon the question. Respondent has failed to assert in what manner and how respondent has sustained or is immediately in danger of sustaining a direct injury as a result of this Court's action. Laird v. Tatum, 408 U.S. 1, 13 (1972) citing Ex Parte Levitt, 302 U.S. 633 (1937). Except the procedural question raised by Ross is similar to that already before the Court in Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201. But-for a similar issue petitioner discerns no valid showing that the respondent's request is of such imperative public importance as to justify the deviation from the well settled rule of this Honorable Court and without qualms, respondent would be accomplishing such a purpose by invidious distinctions between classes of its citizens. Shaprio v. Thompson, 394 U.S. 618, 633 (1969). Because it is well settled rule of this Honorable Court that this Supreme Court does not reach for constitutional questions not raised by the parties. The fact that the issue was mentioned in argument does not bring the question of petitioner's eligibility for parole properly before this Court. Mazer v. Stein, 347 U.S. 201, 206 n.5. (1954)(citations omitted). See generally R. Stern and E. Gressman, Supreme Court Practice. s.6.37 (4th ed. 1969) and cases there cited. However, if this Honorable Court decides to pass upon the question not raised and passed upon by the lower courts. Then, petitioner by way of an affirmative defense will

assert that respondent's contention that petitioner is not eligible for parole until February, 1981 is untrue - unsubstantiated.

This Honorable Court in its decision of Hankerson v. North Carolina, supra, stated:

> Due Process commands that no man shall lose his liberty unless the Government has borne the burden of convincing the factfinder of his guilt.

If the respondent is praying this Honorable Court adjudge petitioner guilty of an unproven offence without a trial, a jury of his peers and a court of the district wherein the crime shall have been committed, then

> to this end, the reasonable doubt standard is indispensable, for it impresses on the trier of the fact the necessity of reaching a subjective certitude of the facts in issue. 397 U.S. at 363-364.

Respondent's specific contention is the escape of course, delayed petitioner's eligibility for parole until February, 1981, hence this Court must decline review. Respondent's unsubstantiated fabricated accusation is frivolous and this petitioner responds by way of an affirmative defence, specifically pleads falsus in uno, falsus in omnibus. Unless respondent can adduce a certified real of a JUDGMENT and COMMITMENT to substantiate its unsubstantiated fabricated accusation to wit escape whereof this petitioner shall have been duly convicted. Respondent does not meet that kind of burden which was contemplated by the application of this Honorable Court's decision of Hankerson v. North Carolina, 397 U.S. at 363-364. If as respondents confess and confirm if it be so that petitioner's case has not been investigated for parole so because prior to submission of reports to the Parole Commission, petitioner was denied access to information in his parole file hence his inability to call mistakes or erroneous information to the attention of the case analyst or other person preparing his report could correct it, let alone understand, why parole was denied him, then we may reason that petitioner ipso facto sustained a direct injury as a result of that action. Laird v. Tatum, 408 U.S. 1, 13 (1972) citing Ex Parte Levitt, 302 U.S. 633 (1937). Considering after all petitioner is not a lawyer and know no other way to put it. O'Shea v. Littleton, 411 U.S. 488, 494 (1974).

Taking respondent's allegation as substantiated though unsubstantiated. The Judges of the State of North Carolina are required by statute to state the dates of commencement and termination of sentences. Hence reforming of a superior court sentence, after return from an escape, remains a judicial function which may not be delegated by the court to be performed administratively by the prison officials whose rules are administrative, not judicial, and cannot affect sentences imposed by the courts. See State v. Shoemaker, 273 N.C. 475, 160 S.E. 281 (1968).

Respondent does not allege that the question of petitioner's eligibility for parole consideration was raised and passed upon by the lower courts. This Court may reason that was because the same Affiant before the Court now, James C. Woodard, Chairman of The North Carolina Parole Commission, testifies in his Affidavit subscribed March 28, 1978, a copy of which is submitted herewith and made a part hereof, that,

> In my capacity as Chairman I am responsible for and have direct access to Parole Commission records. I have reviewed the records of Inmates Daniel Ross, William E. Smith, Jimmy Lee Everette, Leroy Watson, William G. Griffin, Bonnie Lee Daye, Allen Lassiter, Amos Harris and Otis Walston. Inmate Daniel Ross will not be eligible for parole consideration until August 31, 1978. His file reflects that a letter of explanation was written to him by case analyst Kaye Byrd on January 19, 1978. Inmate Ross is serving a life sentence for first degree murder and a two year concurrent sentence for assualt with a deadly weapon. In response to Inmate Ross' request for access to records Ms Byrd wrote to him again on February 15, 1978 explaining a Court of Appeals ruling concerning his request. Copies of these letters are attached hereto and incorporated by reference.

Respondent has not adduced a copy of the alleged JUDGMENT and COMMITMENT to wit petitioner's escape conviction which is a violation of N.C.G.S. 148-45, and without this JUDGMENT and COMMITMENT respondent's January 11, 1979 Affidavit of James C. Woodard, Chairman of the North Carolina, provides no adequate basis on which to take respondent's allegation as true.

Accordingly, this Honorable Court may not accept respondent's invitation in undermining the presumption of petitioner's innocence. Patterson v. New York, 432 U.S. at 227 (1977).

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2. Respondent, James C. Woodard testifies in his Affidavit subscribed 11 January 1979 as noted herein, Daniel Ross

see pp. 5-6 , infra.

II. THE DUE PROCESS CLAUSE DOES APPLY TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA.

North Carolina General Statute 148-58, is not so nebulous so vague that the statute on its face set forth an incomprehensible language if even impredise standard of conduct - demonstrates that "the key words are guaranteeing to every prisoner a review and consideration of his case on the merits. A thing respondents elected not to do in petitioner's case, and that the fable reasonable man may have little difficulty in understanding the general meaning of the phrase: guaranteeing to every prisoners a review and consideration of his case on the merits. Colten v. Kentucky, 407 U.S. 104, 110, 92 S.Ct. 1953,1957, 32 L.Ed.2d 584, 589-90 (1972) and passes constitutional muster if generally understandable. Where liberty as distinct from property interests are at stake fact that individual does not enjoy a legitimate claim of entitlement does not preclude right to due process guarantees. The holdings in Lombardo v. Meachum 548 F.2d 13, 16 (1st. Cir. 1977) and Four Certain Unnamed Inmates v. Hall, 550 F.2d 1291 (1st. Cir. 1977) relied on by respondents, do not detract from the validity of this view. Meachum and Hall both turned primarily on whether a right to be conferred in the exercise of administrative discretion. Where "liberty" as distinct from "property" interests are at stake, the fact that an individual does not enjoy "a legitimate claim of entitlement" does not precludethe right to due process guarantees. Application of the Fourteenth Amendment no longer hinges on "whether a claim involves a "right" or a "privilege". Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971); Morrissey v. Brewer, 408 U.S. at 481, 92 S.Ct. at 2600, 33 L.Ed.2d at 494.

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3. began serving his sentence on March 26, 1969 and after serving six years and four months of his sentence he escaped from the facilities of the Department of Correction. Daniel Ross was returned to the authority of the Department of Correction on September 29, 1977 after having been out on escape for approximately two years and two months. Daniel Ross has served one year and three months since having been returned to the Department of Correction in September, 1977. But see AffiantWoodard's Affidavit subscribed March 28, 1978 and compare.

Thus, while respondents are correct that prisoners have no right to parole, but only a right to be considered for release by the Board, this distinction is without constitutional significance. Bradford v. Weinstein, 519 F.2d at 732, (4th Cir. 1974), v acated as moot, 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975).

Respondent by its own admission voluntarily that their analysis of this question has not been universally accepted.[4] That the Circuit Courts have anlyzed a variety of Parole Eligibility Statutes in a variety of ways, and petitioner concedes. Nevertheless, when the Circuit Courts have decided an important question of federal law in conflict with another Circuit Court such as appearing in the case at bar which has not been settled by the Supreme Court, but should be, the Supreme Court will not hesitate to settle the conflict. . . acknowledging that there are indications both ways in recent Supreme Court opinions. See discussion, Williams v. Ward, 556 F.2d 1143, 1157-58 (2d Cir. 1977), cert. dismissed, 434 U.S. 944, 98 S.Ct. 469, 54 L.Ed.2d 323. Respondent's contention that the due process clause does not apply to decisions to grant or deny parole in North Carolina and it entitles respondent to no relief. Because Inmates of North Carolina Penal Complex like Inmate of Nebraska Penal Complex have comparable Statutes entitle petitioner to procedural due process. See N.C.G.S.15A-1371; N.C.G.S. 143B-261.1; N.C.G.S. 148-58; N.C.G.S.148-60 and compare Neb. Rev. Stat. 83-191; Neb. Rev. Stat. 83-192; Neb. Rev. Stat. 83-1, 114; Neb. Rev. Stat. 83-1, 115; Neb. Rev. Stat. 83-192(9). The North Carolina Parole Commission consist of five members. Under North Carolina Law the Parole Commission is charged with the responsibility of determining whether and when an inmate should be released on discretionary parole. N.C.G.S. 148-60 and N.C.G.S.15A-1371. The Commission is required by statute to review and considered every prisoner's case on the merits except not whether or not eligible for parole- must answer the question of whether or not the time served has

4. The Supreme Court has not decided the exact question before the court of whether a prisoner's interest in prospective parole is an interest to be afforded protection under the due process clause of the Fourteenth Amendment.

represented sufficient punishment for the inmates crime a specific authorized action. See N.C.G.S. 143B-261.1; 5 NCAC 4C; 5 NCAC 4D; N.C.G.S.148-60 and N.C.G.S.15A-1371. Hence eligible or ineligible is not so significantly unauthorized actions, only matters of fair judgment. See N.C.G.S. 15A-1371(d), Criteria.

This Court no longer condones the act of confining an incarcerated citizen for treatment if not dangerous. See e.g., O'Connor v. Donaldson, 95 S.Ct. 2494 (1975). Cf. Furman v. Georgia, 408 U.S. 232. 273, 92 S.Ct. 2726, 2741, 33 L.Ed.2d 340 (1972) (Brennan, J. concurring). This Court in a line of cases has said:

> Mere public intolerance or animosity cannot constitutionally justify the deprivation of the incarcerated citizen's physical liberty. Jackson v. Indiana, 406 U.S.738, 92 S.Ct. at 1858; Cohen v. California, 403 U.S. 15, 24-26, 91 S.Ct. 1780, 1787-1789, 29 L.Ed.2d 284; Coates v. City of Cincinnati, 402 U.S. 611, 615, 91 S.Ct. 1686, 1689, 29 L.Ed.2d 214; Street v. New York, 394 U.S. 576, 592, 89 S.Ct. 1354; 1365-1366, 22 L.Ed.2d 572; Cf. U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 534, 93 S.Ct. 2821,2825-2826, 37 L.Ed.2d 782.

This Court has gone as far as to assert the fact that State laws have authorized confinement of the incarcerated citizen does not itself establish a constitutionally adequate purpose for the confinement. Jackson v. Indiana, 406 U.S. at 720-723, 92 S.Ct. at 1849-1851; McNeil v. Director Patuzent Institution, 407 U.S. 245, 248-250, 92 S.Ct. 2083, 2086-2087, 32 L.Ed.2d 719 after that basis no longer exists. Jackson v. Indiana, supra. Hence whether petitioner is eligible or ineligible for parole is of little or no significant because even if ineligible though not, that is a less important question than the fact that state laws have authorized confinement of the petitioner. Whether the Commission has answered the question whether or not the time served has represented sufficient punishment for the petitioner's crime after that basis no longer exists- authorized action, and whether denial of access to information in his parole file was fatal here. Laird v. Tatum, 408 U.S. 1, 13 (1972) citing Ex Parte Levitt, 302 U.S. 633 (1937). 5

5. If the Parole Chairman did not inform Ross of reasons he was denied parole November 30, 1978 until January 15, 1979 after Ross was allegedly returned to the authority of the Department of Correction on September 29, 1977. Mere public intolerance

6. see pp. 5-6 n2. , infra and pp. 8-9

This Court may take judicial notice that respondent does not allege that there is a substantial risk that petitioner will conform to reasonable conditions of parole; or his release at that time would depreciate the seriousness of his crime or promote disrespect for law; or his continued correctional treatment, medical care, pr vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date; or there is substantial risk that he would engage in further criminal conduct. See N.C. G.S. 148-60 and N.C.G.S. 15A-1371(d), Criteria, (1),(2),(3),(4).[7]

Since respondent on its own, did intelligently and voluntarily confess that the procedural question raised by Ross is similar to that already before the Court in Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201. Petitioner believe that it would be appropriate to confirm respondent's welcome confession in adopting portions of Inmates of Nebraska Penal Complex v. Greenholtz's premises- particularizes and in responding to respondent's allegations; respectfully submits that:

> While parole applicant's status is not changed by denial of his application for parole in the sense that he remains in the same custodial situation as before, the necessity of due process to support denial is not therefore obviated, for the status remains the same because of a Parole Board determination which if favorable would have changed the status to one of greater liberty. Inmates of Nebraska Penal and Correctional Complex v. Greenholtz, 576 F?2d.1271 (8th Cir.) cert. granted, ___U.S.___(October 2, 1978).
>
> The nature of the interest at stake in both parole release and parole revocation is the same, conditional liberty versus incarceration, and therefore, the Fourteenth Amendment applies to both. Inmates of Nebraska Penal Complex v. Greenholtz, supra.

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7. or animosity cannot justify the deprivation of petitioner's physical liberty. Petitioner testifies in his Affidavit before the court that until the case reach the Supreme Court he was not informed of any reason of the denial of parole November 30, 1978, and appears as petitioner testifies because of his character as a jailhouse lawyer, a prison civil rights activist and his classification of many characters by the prisoncrats.

> Since the protection of the due process clause extends to parolees, it may not be denied to inmates; prisoners may not be deprived oflife, liberty, or property without due process of law. Inmates of Nebraska Penal Complex v. Greenholtz, supra.
>
> Society has an interest in not having release on parole denied because of an erroneous determination, and society has a further interest in treating prisoner with basic fairness. Inmates of Nebraska Penal Complex v. Greenholtz, supra.
>
> Where state had made parole an intergral part of its penological system and had provided that those eligible for parole were to be released on parole unless one of reasons for denial specified in the statute was found to be present, the authority to deny parole could not be exercised arbitrarily. See N.C. G.S. 15A-1371; N.C.G.S. 143B-261.1; N.C.G.S. 148-58; N.C.G.S. 148-60/.
>
> Because state prisoner's statutory right to fair parole consideration involved prisoner's liberty interest, prisoner's right to consideration for parole was an aspect of liberty to which protection of due process clause...extended. Inmates of Nebraska Penal Complex v. Greenholtz, supra.
>
> Although severity of loss is not a factor in determining whether govermental action implicates the Fourteenth Amendment, is a factor when considering extent to which procedural safeguards are required. Inmates of Nebraska of Penal Complex v. Greenholtz, supra.
>
> Parole decision is not a part of a criminal prosecution, and full panoply of rights to a defendant in such proceedings does not apply.
>
> At a minimum, once it is determined that an interest is protected by the due process clause, a hearing for the person affected is required. INMATES of Nebraska Penal Complex v. Greenholtz, supra.
>
> Under North Carolina Law, prisoner has right to be considered for parole on basis of certain statutory specifications; to make such right effective, prisoner must be given the opportunity to personally appear before the State Board of Parole to explain and amplify the information on which the Board will base its decision, and the administrative inconvenience and cost of a personal hearing is not sufficient to deprive a prisoner of such right. Inmates of Nebraska Penal Complex v. Greenholtz, supra.

III. ROSS IS [illegible] ENTITLED TO INSPECT HIS FILE TO DETERMINE WHETHER IT CONTAINS ERRORS.

North Carolina General Statute 148-58 creates a liberty or property interest where the language on the face of its statute makes clear that the statute shall be construed as only guaranteeing to every prisoner a review and consideration of his case on the merits. Although Inmates of North Carolina Penal Complex not unlike Inmates of Nebraska Penal Complex have comparable statutes entitle petitioner to procedural due process. The modus operada of the North Carolina Parole Commission is more egregious than that found in Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201, and unlike Inmates of Nebraska

Penal Complex and Inmates of United States Federal Penal Complex, prior to submission of progress reports to the North Carolina Parole Commission, inmates are not shown reports based upon information contained in their central file. They are not given the opportunity to read and agree or disagree with the contents thereof. If there mistakes or erroneous information in their file they cannot call it to the attention of the case analyst or other persons preparing their ~~reports~~ Report so they can correct it. They are not ~~published~~ provided with a summary withheld, or furnished with a copy of the summaries before their parole hearing. Petitioner here was not furnished. There is no available remedy to request a full and complete record of every proceeding and the North Carolina Parole Commission does not make those available to its inmates. If the inmate is denied parole, no conference is setup between the Parole Commission and the inmate, or the examiner thereof, to explain the reasons why he was denied, and no recommendations are made for correcting the deficiencies. Petitioner here was not told and no recommendations were made for correcting the deficiencies. No one tell the inmate what steps he might take to enhance his chances of making parole at his next hearing. Petitioner exhibits and th e Court's records res ipso loquitur that the petitioner here was not told what steps he might take until he petitioned the hightest court of our nation under God individually for which it stands for liberty and justice for all. See Title 18 U.S.C. 4201 et seq., see also Freedom Information Act 5 U.S.C.A. 552 et seq., see also Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201, and compare North Carolina General Statutes N.C.G.S. 15A-1371; N.C.G.S. 143B-261.1; N.C. G.S.148-58; N.C.G.S. 148-60. Recognizing the egregious distinctions between Inmates of Nebraska Penal Complex, Inmates of United States Federal Penal Complex, and North Carolina Parole Commission - cannot constitutionally deny access to its parole files and notice of intention to so classify together with factual data upon which the Commission believes such classification appropriate no later than the in prison interview when it would be a greivous loss for a prisoner like petitioner here, by reason of a completely ex parte proceeding, and the resulting increased opportunity for committing error, to be denied parole and required to serve more of his term because the attention of the Parole Commission was not called to data tending to indicate

that parole should be granted. Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974), vacated as moot, 423 U.S. 147 (1975). The original panel opinion in Franklin v. Shields, 569 F.2d. 784, 789-90 (4th Cir. 1977), rev'd enbanc 569 F.2d 800 (4th Cir. 1978) was not to the contrary

In Franklin v. Shields, the court there said:

> Since the (state) statutes contemplate that a prisoner who has satisfied all the requirements for parole will be conditionally released, the Board's investigation and review are crucial. A prisoner has much at stake in properly conducted parole proceedings, for they may result in his conditional freedom. If the proceedings are flawed - even unintentionally and in good faith, through reliance on incomplete or incorrect information they may add years to a prisoner's confinement. (A thing happening here). Consequently, the accuracy and the sufficiency of the information the Board obtain in its investigation, which the statutes require, can have a decisive effect on parole. Also, whether the Board's review is full andfair, as contemplated by the statutes,may be a determinative factor in the grant or denial of parole. Therefore, we hold that the Statutes governing the manner in which a prisoner shall be considered for parole confer on the prisoner an interest in liberty. (footnote omitted.).

States which have created the right to consideration of parole may not deny the incarcerated citizen to information in his parole file because theincarcerated citizen's interest is to help himself prepare forconsideration of parole or contention that relates to consideration or the application of fairness. Respondent either closes her eyes so that she want see how N.C.G.S. 148-58 actually reads or that she turns her head to keep from seeing that particularly part of N.C.G.S.148-58 which reads in part:

> ". . . shall be construed as only guaranteeing to every prisoner a review and consideration of his case on the merits. . . ."

North Carolina not unlike Nebraska has a comparable statutory right to fair parole consideration, because this right involves the prisoner's liberty interest, the inmates' right to consideration for parole is an aspect of liberty to which the protection of the due process clause extends. Therefore, the minimum requirement of procedural due process appropriate for the circumstances must be observed. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Respondent's contention allowing access to prison files would be burdensome and would undermine efforts to maintain security and promote rehabilitation of prisoners are unpersuasive. Allowing access to prison files imposes no greater burden upon the prison administration than upon thecourts, if as much, and where this right involves the incarcerated citizen's

liberty interest, the prison administration not unlike the courts, may not deny access to its files. See also Freedom Information Act. Respondent admits that in N.C.G.S. 148-60, the North Carolina General Assembly added that "the time of releaseing prisoners shall be fiscretionary." Nevertheless, respondent has no more discretion than the courts and not as much to confine an incarcerated citizen years after years in violation of the Constitution and Laws of the United States. North Carolina not like the other 51 States in the United States, has the highest rate ofprison commitment in the Union. Respondent appears to be thinking in terms of just warehousing incarcerated citizens, who just as free citizens, have an unabridged right to know what their Government says about them. North Carolina may not be an exception. Respondent's contention that opening of files to prisoners would violate the confidentiality of sources importan in the development of background information on prospective parolees is without merit. Access to information in an inmate's files cannot be considered oppressive or objectionable simply because this may cause theParole Commission work, research or expense. Nor is access objectionable because the inmate seeks information guaranteed to him a review and consideration of his own case upon its own merits. Considering the probability of undue burden and expense by providing the incarcerated citizen access to his own files, in the absence of fairness, consideration is non-existence. Though petitioner concede by allowing access to some incarcerated citizens when bad things come out for them to read, they may react irrationally and abnormally. This is natural. Even this Honorable Court itself, at one time or another has witnesses this naturality. But to conclude that by allowing access to incarcerated citizens invites a detrimental psychological effect upon all inmates of negative reports in a logistical sense - suggests a conclusion that incarcerated citizens - all incarcerated citizens - are irrational and un intact persons or human beings. This leave much room for doubt. Respondent does not reveal facts. Instead, reveals its speculative chanacter. These principles were given practical application by this Court in the decision of Row v. Wade, 410 U.S. 113 (1973), where the standing of

a nonpregnant wife, who had received medical advise that pregnancy would endanger her health, to maintain an attach on a state anti-bortion statute was at issue. This Court said, in denying stadding:

> This very phrasing of the Doe's position reveals its speculative character. Their alleged injury rests on possible future contraceptive failure, possible future pregnancy, possible future unprepardness of parenthood, and possible future impairment of health. Any one or more of these several possibilities may take place and all may not combine. In the Doe's estimation, these possibilities may have some real or imagined impact upon their martial happiness. But we are not prepared to say that the bare allegations of so indirect an injury is sufficient to present an actual case or controversy. ROE v. WADE, supra, and compare Sites v. McKenzie, 423 F. Supp. 1190, 1196 (ND.W.Va. 1976).

Some people may be dangerous and not mentally ill and others may be serverly mentally ill but not violent or dangerous. Hence it is very difficult for psychiatrist to predict dangerousness. There is absolutely nothing whatsoever appearing in the record which would suggest that respondent was or is, a licensed psychiatrist to predict dangerousness. Because reports becomes part of the prisoner's files, affecting numerous classfication and parole decisions to be made about him.. Indeed, it may follow him throughout prison system. The Board holds the key to the lock of the prison, It possesses the power to grant or to deny conditional liberty. The result of the Board's exercise of its discretion is that an applicant suffers a greivous loss or gains a conditional liberty. If the Board's decision were based on an erroneous description of the conduct underlying an offense as in petitioner's case at bar but which the petitioner is denied access to information in his file and opportunity to rebut evidence erroneous. He is denied parole anew each time his record is used against him. It happened to petitioner here.

CONCLUSION

For all these reasons, Respondents' contentions are without merit and their Petition for dismissal should be denied.

Respectfully submitted,

DANIEL ROSS, pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Counter Response to Petition for Writ of Certiorari to Review a Decision of the United States Court of Appeals for the Fourth Circuit has been mailed, postage prepaid, to the Following:

1/27/79

Mr. Ben G. Irons, II
Assistant Attorney General

N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

DANIEL ROSS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

Civil 78-56-CRT

DANIEL ROSS, ET AL.,

Plaintiff

v.

JAMES B. HUNT, JR., ET AL.,

Defendant

AFFIDAVIT

I, James C. Woodard, being first duly sworn, depose and say:

That I am employed by the State of North Carolina as Chairman of the North Carolina Parole Commission. My office is located at 831 West Morgan Street, Raleigh, North Carolina.

In my capacity as Chairman I am responsible for and have direct access to Parole Commission records. I have reviewed the records of Inmates Daniel Ross, William E. Smith, Jimmy Lee Everette, Leroy Watson, William G. Griffin, Bonnie Lee Baye, Allen Lassiter, Amos Harris and Otis Walston.

Inmate Daniel Ross will not be eligible for parole consideration until August 31, 1978. His file reflects that a letter of explanation was written to him by case analyst Kaye Byrd on January 19, 1978. Inmate Ross is serving a life sentence for first degree murder and a two year concurrent sentence for assault with a deadly weapon. In response to Inmate Ross' request for access to records Ms. Byrd wrote to him again on February 15, 1978 explaining a Court of Appeals ruling concerning his request. Copies of these letters are attached hereto and incorporated by reference.

Inmate William E. Smith was reviewed for parole in February, 1977. The Parole Commission, at that time, declined to parole Inmate Smith. Their decision was based on previous criminal record, nature of crime committed, custody grade and previous

probation record. Inmate Smith was notified of the Parole Commission's decision and reasons therefore by letter dated February 22, 1977 from case analyst Mary R. Logan. Inmate Smith was again reviewed for parole during February, 1978. The Commission declined to parole Inmate Smith at this time. Their decision was based on his present custody level and unsatisfactory institution conduct. Inmate Smith was notified of the Parole Commission's decision and reasons therefore by letter dated February 14, 1978 from case analyst Sam Boyd. Copies of the above referenced letters are attached hereto and incorporated by reference.

Inmate Jimmy Lee Everett is not eligible for parole consideration until January 29, 1983. He is serving a life sentence for first degree murder. Inmate Everette received a letter from C. Dempsey McDaniel, Parole Commission member, dated July 25, 1975 responding to Inmate Everette's correspondence to Governor Holshouser concerning a request for a new trial and informing him of his parole consideration date. A copy of this letter is attached hereto and incorporated by reference.

Inmate Leroy Watson was first reviewed for parole on November 14, 1975. Parole was denied at that time due to prior criminal record and custody level. Inmate Watson was notified of the Commission's decision and reasons therefore by letter dated December 3, 1975 from case analyst Marcelle Parrish. Inmate Watson was again reviewed for parole during November of 1976. Parole was denied at this time due to poor prison conduct and custody level. Inmate Watson was notified of this decision and reasons therefore by letter dated November 29, 1976 from case analyst Marcelle Parrish. Inmate Watson was last reviewed in November of 1977. At that time the Parole Commission denied parole due to custody level and unsatisfactory institutional conduct record. Inmate Watson was notified of this decision and reasons therefore by letter dated November 22, 1977. His

case will be reviewed again on June 25, 1978. The above referenced letters are attached hereto and incorporated by reference.

Inmate William G. Griffin is serving a life sentence on conviction of Rape and eighteen to twenty-four months, six months, thirty days and eighteen to twenty-four months concurrently for Larceny, Reckless Driving, Failure to Heed a Siren and Failure to Stop after an Accident resulting in Property Damage. His parole consideration date is January 27, 1981. Our records reveal that Inmate Griffin's mother, Mrs. Christine Tillman, was informed of these facts by letter dated March 28, 1973 from David L. Jones, Secretary of the Department of Correction at that time. A copy of this letter is attached hereto and incorporated by reference.

Inmate Bennie Lee Daye was first reviewed for parole during March of 1976 at which time parole was denied. The Commission felt that Inmate Daye should be under observation on the work release program and receive continued correctional treatment. Inmate Daye was notified of this decision by letter dated March 17, 1976 from case analyst Sandra Elliot. He was again reviewed for parole on February 12, 1977. At this time parole was denied due to previous court and prison record and the nature and circumstances of his crime. The records indicate an extensive criminal record dating back to 1951. Inmate Daye is presently incarcerated for selling narcotic drugs. Inmate Daye was notified of the Parole Commission's decision and reasons therefore by letter dated March 3, 1977 from case analyst Sandra Elliot. The letters mentioned above are attached hereto and incorporated by reference.

Inmate Allen Lassiter is eligible for parole consideration in October, 1978. Inmate Lassiter was informed of his parole eligibility status by letter dated February 3, 1977 from case analyst L. M. Mitchell. A copy of this letter is attached

hereto and incorporated by reference.

Inmate Amos Harris was first reviewed for parole on March 30, 1976. The Parole Commission denied parole at that time due to poor prison conduct and custody level. Inmate Harris was informed of this decision by letter dated April 8, 1976 from case analyst Jean M. Mallard. Inmate Harris was again reviewed on January 25, 1978. The Commission denied parole at this time due to poor prison conduct and custody level. Inmate Harris was notified of this decision by letter dated February 13, 1978. His case is scheduled for review again on January 28, 1979. The letters referred to above are attached hereto and incorporated by reference.

Inmate Otis Walston will be eligible for parole consideration on January 20, 1982. A letter to Mrs. Otis Walston dated August 22, 1977 from case analyst Marcelle Parrish, responding to Mrs. Walston's inquiry of the Governor's office concerning her husband is attached hereto and incorporated by reference. Inmate Walston is serving a twenty year sentence for armed robbery. Mrs. Walston made a further inquiry concerning her husband's case to Senator Robert Morgan in July, 1977. Case analyst Marcelle Parrish responded by letter dated August 24, 1977 to Mrs. Walston further clarifying the Parole Commission's position concerning Inmate Walston's case. A copy of Ms. Parrish's letter dated August 24, 1977 to Mrs. Walston is attached hereto and incorporated by reference.

I specifically deny that these inmates have been discriminated against because of race, religion or national origin. An inmate's race, religion or national origin has absolutely no bearing on his parole eligibility. The above named inmates have been treated in the same manner as any other inmates in the State's Prison System.

This the 28 day of March, 1978.

James C Woodall
Affiant

Sworn to and subscribed before me
this the 28th day of March, 1978.

Esta E. Allen
Notary Public

My Commission Expires: My Commission Expires Dec 5, 1979

Civil Action
78-0535

Inmates' suit charges racial discrimination

By RON KERTZNER
Staff Writer

Two inmates at the Franklin County Prison Unit, acting on behalf of 70 other prisoners, have filed a racial discrimination and segregation lawsuit against the state Department of Correction.

Daniel Ross and Jerryl A. Martin asked in the lawsuit filed in U.S. District Court in Raleigh last month that the prison be placed under federal supervision.

They claimed that discrimination and segregation have been used by the correction department in the classification of black prisoners.

"Black prisoners are disproportionately held in the medium security section when prison officials know they deserve privileges offered as an inducement for good conduct. (But) white prisoners can get offense reports, show little or no respect and get promoted to minimum custody," the suit said.

Ross and Martin also said black prisoners are arbitrarily and systematically excluded from federally funded education and vocational services and have been "racially and discriminately denied favorable recommendations for considerations for parole."

The suit charged the department with violating the Civil Rights Act of 1964.

David M. Blackwell, senior administrative assistant with the Department of Correction, would not comment on the suit and said the "appropriate material" was being sent to the state attorney general's office.

Blackwell said his office has handled several lawsuits similiar to the one filed by Ross and Martin. The department has not lost any of the suits, Blackwell said.

In a letter addressed to Martin on Oct. 26, U.S. Attorney George M. Anderson said the request that the federal government supervise the prison unit was forwarded to the U.S. Department of Justice.

Anderson said the Justice Department would decide whether the U.S. District Court could intervene.

Martin is serving a 16- to 20-year sentence for re[b] and attempted robbery with a dangerous weapon. He serving a life sentence for first-degree murder.

Both men said the composition of the state Corre[c] Department, in which they say nearly all top-level sion-making positions are held by whites, is responsi[b] the racial discrimination and segregation in the Fra[n] County Prison Unit.

The suit said that only one black is employed on the Paroles Commission, which "determines whether prisoners get the opportunity to return to the commun promptly as practicable."

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

P. O. Box 25670

RALEIGH, NORTH CAROLINA 27611

JOHN R. WHITTY
CLERK

TELEPHONE 755-1330
AREA CODE 919

October 19, 1978

The Honorable F. T. Dupree, Jr.
United States District Judge
Eastern District of North Carolina
Raleigh, North Carolina

Re: Civil Rights Roster No. 1592 -

Daniel Ross v. James G. Hodges, etc., et al.

Case Judge Dupree

Enclosed please find a copy of the following papers received from above-named prisoner on October 19, 1978

1. Declaration in Support of Request to Proceed In Forma Pauperis
2. Complaint

Our records disclose that this prisoner has previously submitted the following civil action(s): see attached sheet

Roster No. _____ Case No. _____

Date filed _____ in forma pauperis (yes) (no)

Date closed _____

If you allow this complaint to be filed in forma pauperis, we will assign a Raleigh Division civil number and serve a copy of the complaint on the defendants.

Sincerely,

JOHN R. WHITTY, Clerk

By _____
Deputy Clerk

Enclosures

cc: Mr. Daniel Ross
P.O. Box 155
Lynn, N.C. 27553

Civil Rights Actions filed in the Eastern District of N.C. by Daniel Ross since 1974 : (* allowed to proceed in forma pauperis)

ROSTER NO.	CASE NO.	DATE FILED	DATE CLOSED
1346	78-0056-CRT	2/1/78	Pending
1376	78-0142-CRT	3/21/78 *	4/10/78
1392	78-0167-CRT	4/12/78 *	7/28/78
1390	78-0172-CRT	4/17/78 *	5/3/78
1395	78-0173-CRT	4/20/78 *	4/21/78
1460	78-0337-CRT	7/14/78 *	7/26/78
1446	78-0317-CRT	7/7/78 *	7/7/78
1474	78-0327-CRT	7/12/78 *	7/12/78
1479	78-0328-CRT	7/12/78 *	7/12/78
1480	78-0318-CRT	7/10/78	7/10/78
1492	78-0351-CRT	7/26/78	7/26/78
1500	78-0452-CRT	9/14/78 *	9/14/78
1570			
1576			

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO. _____
FILE NO. _____

In re:

INMATE CLEM[illegible] PITT

v.

GEORGE D. ROCHE, as Defendant

and

FREDERICK HEAMON, as Defendant

AFFIDAVIT IN RE: OUT OF [illegible]
AND CRIMINAL CONVICTION
OF DIVISION INMATE CLEM[illegible]

CLEM[illegible], being first duly sworn under oath deposes and says:

That I am and at all times prior to the submission of this affidavit, a citizen of the United States, over the age of twenty-one, and a resident of Halifax County, North Carolina, who is incarcerated in the Caledonia Prison Farm, Halifax County, North Carolina, and am presently so incarcerated but that from November or [illegible] of 1972, I was incarcerated in the Caledonia Prison Farm, Halifax County, North Carolina. That I make this Affidavit pro hac vice on behalf of and for the benefit of, Inmate Clem[illegible] Earl Pitt, and do make, and have made, without promise of remuneration, inducements, threats or the like, and of my own free will, each and every statement contained herein.

That I was employed as a Caledonia Former Inmate Medicine Room Clerk, and in this capacity, I had occasion to learn about the mis, non, and untimely medical treatment of inmates as received in the Caledonia Prison which resulted from an 'arbitrary or capricious' exercise of judgment by prison officials, and not only by Defendants George D. [illegible] and Frederick Heamon, but also by Director of Division of Prisons one Dalton [illegible], or should have had, knowledge of defendants' acts and omissions [illegible], and involving the alleged untimely medical treatment of the [illegible] Clem[illegible] Earl Pitt, and other inmates.

But as is known, and have been documented, [illegible] inmates on administrative segregation where the decease dies, have swallowed razor blades in their efforts to get adequate, sufficient and timely medical treatment and were transported to the General Prison Hospital for operative medical treatment, and returned to the Caledonia Prison and again, placed on administrative segregation, [illegible] or supervision and provision sufficiently to have been made, and [illegible] the same thing all over again. In addition, inmates have inflicted serious wounds upon themselves, and have been assaulted by defendants, their servants, [illegible] and those acting in interest, or because of lex talionis between the inmate and the Caledonia Prison officials, and prison reprisal as a whole. That of my own knowledge [illegible] Caledonia Prison Farm, on Block, and of my own knowledge [illegible] there, inmates were diagnosed overdosages of Control Substances [illegible] prohibited them in [illegible] or capricious' judgment by prison officials [illegible] lack of inadequate, insufficient, and untimely medical treatment, and [illegible] degree of human treatment. E.g., Controlled Substance daily and [illegible] diagnosed, were not accurately documented until sometimes after the [illegible] and documents recorded did not become recorded until sometime during the [illegible] of 1973. It should be noted, however, that I was interviewed by the Director of Division of Prisons assistants regarding matters and things about inmate medical treatment, [illegible] of officials' acts, while incarcerated in the Caledonia Prison but [illegible] or known [illegible] to relief forseen.

Accordingly, I specifically [illegible] that the [illegible] as a result of an 'arbitrary or capricious' exercise of judgment by prison officials.

[illegible]
AFFIANT

Described and sworn to before me
this 3rd day of September, 1973

[illegible]
Notary Public

[illegible]
My Commission Expires

-2-

Exhibit A

...inmate's death investigation is completed

State Bureau of Investigation agents have completed an inquiry into actions of Caledonia prison personnel who had custody of an asthmatic inmate who died Christmas Eve.

Glen Earl Pitt, 24, of Enfield, had previously been treated for asthma at the Central Prison hospital and had been back at Caledonia in Halifax County only for a few days before becoming ill on Dec. 24. He collapsed and was pronounced dead on arrival at a Scotland Neck hospital.

The report, described by SBI sources as "lengthy," will be sent next week to W.H.S. Burgwyn Jr., district attorney for that area.

A letter signed by 365 prison inmate was sent to Pitt's family. It alleged that he was denied adequate treatment and died as a result.

Pitt was in the fourth month of a [illegible] year

October 31, 1978

Daniel Bond #207A792-88
Franklin County
P. O. Box 156
Bunn, North Carolina 27508

Mr. James L. Goddard
Chairman of The Parole Commission
121 West Morgan Street
Raleigh, North Carolina 27603

Re: Arbitrary and Systematic Exclusion of benefits of North Carolina General Statutes 148-63 Pre-Parole Investigation

Dear Mr. Goddard:

I have read the Parole Criteria 5NCAC 1C Policy, Review and Investigation beginning at .1601 and concluding at .1619 including Article 19 North Carolina General Statutes 148-62 through 148-85. Please inform me or otherwise advise why I, and said Daniel Bond, am being systematically excluded from every possible consideration at parole and denial of pre-parole investigation.

In summary, how does my residence, employment and military service in Philadelphia, Pennsylvania have not and are not being checked [illegible] Is it possible that you have no intention of providing me with [illegible] consideration at parole? If you do not answer within [illegible] receipt within 7 working days. I will deem my request denied either in whole or in part, please inform me as to your appeals procedure since the Inmate Grievance Commission has no authority over Parole Commission.

Thank you for your prompt attention in this matter.

Respectfully submitted,
Daniel Bond
#207A792

cc:
Margaret Croom
[illegible] & SHARON THOMPSON
Attorneys at Law
1210 Capital Club Building, P. O. Box [illegible]
Raleigh, North Carolina 27602

Mr. Norman B. Smith, Esquire
General Counsel
North Carolina Civil Liberties Union
P. O. Box 3094, Greensboro, NC 27402

Hon. Lewis [illegible]
U. S. Magistrate
(Case v. [illegible]
No. 78-66-
P. O. Box 2[illegible]
Raleigh, NC 27602

RUFUS L. EDMISTEN
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P. O. Box 629
RALEIGH
27602

29 August 1978

Mr. Daniel Ross
Bunn Correctional Institute
Post Office Box 155
Bunn, North Carolina 27808

Re: Ross v. Reed, 78-26-HC

Dear Inmate Ross:

In response to your August 27, 1978, memo concerning the above-referenced case and your petition for bail pending determination of the case, I continue to oppose release on bond or recognizance pending the outcome of the case.

Turning to another matter, your memo of August 22, 1978, which I forwarded to my co-worker Mr. Safron by letter of 28 August 1978, caused him to express concern that you may be encouraged to file more law suits by virtue of my sending your letter to him. I therefore request that you file only those law suits that you would have in the event I had not sent your memo to him.

Again, trusting your rehabilitation is coming along well, I remain

Very truly yours,

RUFUS L. EDMISTEN
ATTORNEY GENERAL

Richard N. League
Assistant Attorney General

RNL/ejm

cc: Honorable F. T. Dupree, Jr.
Mr. Jacob L. Safron

VAN WINKLE, BUCK, WALL, STARNES, HYDE AND DAVIS, P. A.
ATTORNEYS AND COUNSELLORS AT LAW
18 CHURCH STREET
POST OFFICE BOX 7376
ASHEVILLE, NORTH CAROLINA 28807
704-258-2991

O. C. STARNES, JR.
HERBERT L. HYDE
ROY W. DAVIS, JR.
BRIAN P. D. LAVELLE
LARRY MCDEVITT
PHILIP J. SMITH
GARY B. KEMPSON
ALBERT L. SNEED, JR.
RUSSELL P. BRANNON
ALFRED G. ADAMS
HOWARD L. GUN
DAVID R. MILLER
ROBERT H. HASSARD (ON LEAVE)

KINGSLAND VAN WINKLE
1879-1958

OF COUNSEL
CHARLES B. BUCK
ROBERTSON WALL

July 25, 1978

Mr. Daniel Ross
Caledonia Prison
Post Office Box 137
Tillery, North Carolina 27887

Dear Mr. Ross:

This will acknowledge receipt of your letters of June 20 and June 25, 1978, along with Norman Smith's letter of May 11, 1978, containing a copy of the reply you filed in response to the State's motion to dismiss filed in your civil rights suit. Congratulations on successfully withstanding the motion to dismiss. Your reply was very thorough, and I am sure it was most helpful to the Court in making its decision.

I appreciate your interest in the complaint we have filed. We will be happy to bring you up to date. The State has filed a petition for a writ of certiorari from the U. S. Supreme Court. The writ was filed on June 26, 1978. Our reply brief has been prepared and is now being printed for filing in the Supreme Court later this week. It remains to be seen whether the Supreme Court will grant the writ. I hope you will keep in touch with us, as I believe your testimony might be of value in the event we ever get this case to trial. If you have information on any other individuals who have had personal experiences which would make them valuable as witnesses, I would appreciate your letting me know their names.

By the way, is Robert Fink still at Caledonia? If so, I would appreciate your letting him see this letter. If he is not there and you know where he is now, I would appreciate your letting me know his address.

Sincerely yours,

RUSSELL P. BRANNON

RPB:yr

North Carolina
Civil Liberties Union
Legal Foundation

814 Southeastern Building
P.O. Box 3094
Greensboro, North Carolina
27402

(919) 273-1641

President: Sarah H. Ramsey
Vice President: C. Frank Goldsmith
Secretary: Mike Glancy
Treasurer: Dave DuRusson
Affiliate Delegate National Board:
Katherine Sebo
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Marion Wright, Linville Falls

Editor, Newsletter:
Tom Tedford

Executive Director:
George H. Gardner

June 27, 1978

Mr. Daniel Ross
P. O. Box 137
Tillery, North Carolina 27887

Dear Mr. Ross:

The Board of Directors of the North Carolina Civil Liberties Union Legal Foundation decided at their June 17th meeting to give further consideration to the matters that you brought to my attention. These are proposed lawsuits to remedy the practice of placing inmates on lockup who file grievances in an effort to coerce them to withdraw their petitions, and the requirement that all outgoing court papers be examined by correctional personnel before mailing. It was decided that these two items should be turned over to the North Carolina Prisoner's Rights Project for investigation and evaluation before proceeding further. By copy of this letter I am transmitting your correspondence to the Prisoner's Right Project. You should be hearing from that office soon.

Yours sincerely,

Norman B. Smith

NBS/gt

cc: North Carolina Prisoner's Rights Project
University of North Carolina Law School
Chapel Hill, North Carolina 27514

William W. Merriman III
Merriman and Nicholls
P.O. Box 18237
Raleigh, NC 27619
Tele: 919-781-1311

STATE OF NORTH CAROLINA
DEPARTMENT OF CORRECTION

JAMES B. HUNT, JR.
Governor

AMOS E. REED
Secretary

NORTH CAROLINA
DEPARTMENT OF CORRECTION

840 W. Morgan Street Raleigh, N. C. 27603 (919) 733-4926

June 19, 1978

Mr. Daniel Ross
P. O. Box 137
Tillery, North Carolina 27887

Dear Mr. Ross:

The materials you sent to Secretary Reed were forwarded to me for response.

The materials relating to Mr. Pitt will be made part of our files in the case. The Secretary and the Director are both well aware of the situation. Every death is tragic. As you are aware, the State Bureau of Investigation has investigated the death. There is also a possibility that litigation may occur in this case. I must decline to discuss the situation further because of the pending litigation.

The materials relating to Ross v. Sanders, Civil No. 78-167-CRT, will be forwarded to the Attorney General's Office. The Departments response to the suit has been filed in the District Court and stands as our position.

Sincerely,

Richard Kucharski
Senior Administrative Assitant
Division of Prisons

RK:lmg

cc: Records
Files

DC-410
10/76

GRIEVANCE FORM

A. GRIEVANCE STATEMENT
(Attach Additional Pages if Necessary)

NAME Daniel Ross #207492
LOCATION 4505
DATE 3-31-78 TIME 8:30

ON 3-13-78, I requested to use the Coleman Writ Room was denied by Sgt. Stephenson & Lt. Wilson Chief Rooney. It should be noted that the denial followed a Civil action against by place of confinment to wit 78-56-CIV federal Court. Also denied my monthly telephone call. My mistreatment is personal based on racial hindrances and bias against the writen Daniel Ross, is not use.

Inmate's Signature

B. EVALUATION (Attach Additional Pages if Necessary)

My investigation reveals that inmate Daniel Ross is not assigned to the Writ Room and the two inmates that were assigned to the Writ Room were transferred to central Prison to attend Law Schools.

RECEIVED
CALEDONIA PRISON

Sgt. Willis
Investigator's Signature And Date

Officer In Charge

C. ACTION RECOMMENDED/TAKEN

Locks Merit

UNIT/INSTITUTION COMMITTEE ACTION

Superintendent's Signature And Date

D. ✓ AGREE WITH ACTION TAKEN
APPEAL TO AREA/INSTITUTION REVIEW BOARD

Refused to sign 3-31-78

Inmate's Signature And Date

E. GRIEVANCE REVIEW BOARD RECOMMENDATION (Area/Institutional)

Member

Member

Area Administrator/Institution Head And Date

F. APPEAL TO INMATE GRIEVANCE COMMISSION
AGREE WITH ACTION TAKEN

Inmate's Signature And Date

Distribution: Green Copy—Inmate/IGC (Final Disposition)
Goldenrod Copy—Superintendent, Institution Head
Pink Copy—Warden, Area Administrator, Complex Superintendent, File
Blue Copy—Inmate (Information Copy)
Yellow Copy—Inmate Grievance Commission (Information Copy)

STATE OF NORTH CAROLINA
DEPARTMENT OF CORRECTION

OFFICE MEMORANDUM

TO : David Ross

DATE: March 14,

FROM : Mr. L. V. Stephenson, Superintendent

RE : Petition (Inmate Clerk)

I received the petition signed by the majority of the inmate population in reference to you being assigned to the law library. I discussed this matter with you on March [illegible] and informed you that you were the one that prepared the petition. I have no idea as to how you got the inmates to sign it. I will assure you this will not have any bearing on you being assigned to the law library.

LVS/bb

March 10, 1978

Mr. Fletcher K. Sanders
Complex Administrator
Caledonia-Odom Complex Office
Post Office Box 137
Tillery, North Carolina 27887

Re: Daniel Ross

Dear Mr. Sanders:

Thank you for your detailed letter of February 20, 1978. I appreciate the thoroughness with which you investigated the complaint that I brought to your attention. I have sent Mr. Ross a copy of your letter. If any points remain unresolved in his opinion, I am sure I will hear from him. Then I in turn will get in touch with you.

Yours sincerely,

Norman H. Smith

NHS/ct

CC: Mr. Daniel Ross

NORTH CAROLINA
DEPARTMENT OF CORRECTION
DIVISION OF PRISONS

Governor
AMOS E. REED
Secretary
RALPH D. EDWARDS
Director

CALEDONIA-ODOM COMPLEX OFFICE
Post Office Box 137
Tillery, N. C. 27887

February 20, 1978

Mr. Norman H. Smith
General Counsel
North Carolina Civil Liberties
Union Legal Foundation
Post Office Box 3094
Greensboro, North Carolina 27402

re: Daniel Ross

Dear Mr. Smith:

I have personally talked to Daniel Ross and found that his recent letter to you dated February 8, 1978 was a gross misrepresentation of the facts and either an attempt to con you or an effort to harrass or intimidate the Caledonia staff.

Mr. Creecy indicated that prior to the date mentioned by Ross, he had instructed him that he was to use the writ room exactly as any other inmate with no special privileges. These instructions came about as a result of Ross being a former librarian/clerk when he was formerly assigned to Caledonia. There are presently two librarian/clerks assigned to the facility and regulations require that one of them be present whenever the writ room is in use. This is an effort to safeguard supplies and equipment; and insure that the limited legal material is not misused or destroyed but kept available for everyone's use. Generally, the writ room is open all day and well into the evening; however, there are rare instances where one or both clerks must be out of the area on a limited basis and during that time, inmate use of the writ room is not allowed.

During my conversation with Inmate Ross, he admitted that he had used the writ room on a daily basis without exception since his return to Caledonia. He further admitted that he knew of no other inmate in the institution that had used the writ facility on such a regular basis. He further admitted that he did not have any law suit against the Caledonia Institution nor its staff. It, therefore, would seem totally absurd that a staff member would place any pressure against Ross to drop a non-existant law suit. Ross admitted to me that no such pressure had been applied.

I assure you that Daniel Ross is using the writ room and that he has not been mistreated in any way. If I can be of further assistance to you, please notify me.

Sincerely,

Fletcher K. Sanders
Complex Administrator

FKS/pkh

JAMES B. HUNT, JR.
GOVERNOR

JAMES C. WOODARD
CHAIRMAN

State of North Carolina
Parole Commission

831 West Morgan Street
Raleigh 27603
TELEPHONE 733-3414

COMMISSIONERS
JANE G. GREENLEE
J. C. JONES
RAE H. McNAMARA
HENRY W. OXENDINE

March 9, 1978

Mr. Daniel Ross #20747-92 (KB)
Caledonia - 3305

Dear Mr. Ross:

Your January 22 petition to Governor Hunt requesting commutation, pardon or early parole has been referred to the Parole Commission for study and reply.

The file reflects that you are serving a life sentence for first degree murder and a two-year concurrent sentence for assault with a deadly weapon. After carefully reviewing your case, I am unable to identify any existing situation which would justify a recommendation to Governor Hunt that your sentence be commuted or otherwise reduced. State Law requires that an inmate serve a minimum of one-fourth of his sentence, or, in your case, 10 years before you can be eligible for parole consideration. Therefore, we can take no action in your case prior to your parole eligibility date of November 30, 1978. Your case is scheduled to be reviewed for parole 90 days prior to that date, and you may be assured that you will receive every possible consideration.

I urge you to maintain the very best possible attitude and conduct record, as this is taken into consideration by the Commission when making a decision in your case, and is also considered by the Division of Prisons in promoting you to minimum custody.

Sincerely,

Kaye Byrd
Case Analyst

KB:ew

State of North Carolina
Parole Commission

831 West Morgan Street

Raleigh 27603

TELEPHONE 733-3414

JAMES B. HUNT, JR.
GOVERNOR

JAMES C. WOODARD
CHAIRMAN

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HENRY W. OXENDINE

February 15, 1978

Mr. Daniel Ross #20747-92 (KB)
Caledonia - 3305

Dear Mr. Ross:

This is in response to your request for access to records received in our office on February 9, 1978.

The four Circuit Court of Appeals ruled on January 3, 1978 that "We discern no constitutional requirement that each prisoner receive a personal hearing, have access to his files, or be entitled to call witnesses in his behalf to appear before the Board." In accordance with this ruling, I am unable to comply with your request.

Your case is scheduled to be reviewed for parole August 31, 1978, and you may be assured that you will receive every possible consideration at that time.

Sincerely,

Kaye Byrd
Case Analyst

KB:ew

cc: Deborah G. Mailman, Attorney
Deborah Mailman & Sharon Thompson
Attorneys at Law
Capital Club Building, P. O. Box 868
Raleigh, North Carolina 27602

North Carolina Civil Liberties Union Legal Foundation

814 Southeastern Building
P.O. Box 3094
Greensboro, North Carolina
27402

(919) 273-1641

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Marion Wright, Linville Falls

Editor, Newsletter: Tom Tedford

Executive Director: George H. Gardner

February 8, 1978

Superintendent of Caledonia Prison
Tillery, North Carolina 27887

RE: Daniel Ross

Dear Sir:

We have received a complaint from your inmate Daniel Ross to the effect that on February 2, 1978, he was ordered out of the writ-room, and was deprived of his access to legal materials and a typewriter to the same extent these are made available to other inmates. He states also that pressure was placed on him by prison officials to withdraw a lawsuit to which he is presently a party in the United States District Court for the Eastern District of North Carolina, alleging overcrowded conditions and violations of various habitability standards in prisons. I trust that you will take proper action to insure that Mr. Ross is accorded full and equal use to legal materials and other facilities necessary to insure his access to the courts, and that efforts are not made by prison officials to get him to abandon any litigation to which he is a party.

Yours sincerely,

Norman B. Smith

NBS/mlb

cc:
Mr. Daniel Ross
Caledonia Prison
Tillery, North Carolina 27887

Ms. Deborah Mailman
Post Office Box 868
Raleigh, North Carolina 27602

JAMES B. HUNT, JR.
GOVERNOR

JAMES C. WOODARD
CHAIRMAN

State of North Carolina
Parole Commission

831 West Morgan Street
Raleigh 27603
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HENRY W. OXENDINE

January 19, 1978

Mr. Daniel Ross #20747-92 (KB)
Caledonia - 3305

Dear Mr. Ross:

This is in response to your January 16 letter requesting information about parole.

The file reflects that you are scheduled to be reviewed for parole consideration on August 31, 1978. I note that you are serving a life sentence for first degree murder and a 2-year concurrent sentence for assault with a deadly weapon. The Parole Commission does not parole from medium custody, and it will be necessary for you to be promoted to minimum custody before you can be paroled. In addition, the Parole Commission may desire to observe you on the Work Release Program for a period of time before consideration for parole.

I do not know what the decision of the Commission will be when your case is reviewed in August; however, you may be assured that you will receive every possible consideration at that time.

I urge you to maintain the very best possible attitude and conduct record in the future so that you may be promoted to minimum custody and be recommended for participation on the Work Release Program when you become eligible.

Sincerely,

Kaye Byrd

Kaye Byrd
Case Analyst

KB:ew

JAMES B. HUNT, JR.
GOVERNOR

JAMES C. WOODARD
CHAIRMAN

State of North Carolina
Parole Commission

831 West Morgan Street
Raleigh 27603
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HENRY W. OXENDINE

October 25, 1977

Mr. Daniel Ross, #20747-92 (KB)
Central Prison
#3100

Dear Mr. Ross:

Your recent letter to Mr. Cohoon, Director of Adult Probation and Parole has been forwarded to the Parole Commission for reply.

The file shows that you are serving a life sentence for First Degree Murder and that you are not eligible for parole consideration until 11-30-78.

I do not have a copy of the N. C. Parole Commission's Act. Perhaps, Congressman Conyers or Rodino with the U. S. House of Representatives can provide this information for you.

Sincerely,

Kaye Byrd

(Mrs.) Kaye Byrd
Case Analyst

KB:gm

Office Memorandum

DEPARTMENT OF CORRECTION
831 WEST MORGAN ST. RALEIGH 27603

TO: Daniel Ross # 20747-92 **PLACE:** Central #3100 **DATE:** 11/10/77

FROM: Ben L. Baker, Supervisor—Combined Records

SUBJECT: Release Date

The following information is submitted in response to your recent inquiry dated Oct. 28

1. Present sentence being served Life
2. Minimum and approximate expiration date Life
3. Maximum and approximate expiration date Life
4. Sentences to be served consecutively None
5. Sentences being served concurrently None
6. Emergency credits earned 3 mos. & 14 das. pre-trial credits
7. Credits for Work Grade I, II, or III No.I: 4-8-70 - 7-16-70; No.I: 12-8-71 - 1-19-72; No.II: 5-1-72 - 10-13-72; No.I: 10-13-72 - 10-16-72; No.I: 10-20-73 - 11-16-73; No.III: 11-16-73 - 8-1-74; No.III: 8-21-74 - 11-7-74; No.III: 11-17-74 - 7-25-75
   (If placed on or removed from one of these Work Grades, your minimum and/or maximum release date will be adjusted accordingly.)
8. Lines 6 and 7 are included in lines 2 and 3 if extra credits were reported.
9. Detainers No detainer as of this date.

If you are serving an indeterminate sentence, the final release date for this sentence will be determined by the Parole Commission.

lhp

COMMENT: Your parole eligibility date is posted as November 30, 1978.

ommitment rate high

June 11, 1978

Overcrowding in N. C. prisons intolerable burden

By Amos Reed

The writer is secretary of the N. C. Department of Corrections.

North Carolina has the unhappy distinction of having the highest rate of prison commitment of any state, and the fifth highest inmate population. North Carolina incarcerates at the rate of 240.06 per 100,000 general population as compared with the national average rate of incarceration of 94.85 per 100,000 population.

Although the inmate population fluctuates from day to day, the trend over the past several years has been steadily upward. The figure could well exceed 15,000 inmates by year's end.

This burgeoning prison population has resulted in over 1,700 inmates assigned to Central Prison which was designed for 850; as many as 140 inmates to some field units designed for 96. The result of this staggering overload is that the North Carolina prison system was standing at 2,773 inmates over its rated capacity and 586 under its emergency capacity on January 1, 1978.

The human effect on both staff and inmates is unacceptable. All programs and functions are overstrained and under-responsive.

THE PROBLEM itself is many-faceted. Our response is being mounted from many directions.

With over 14,000 inmates packed into a system with a maximum operating capacity of 13,467 the obvious and immediate reality is physical overcrowding. The building of more prisons and expansion of existing facilities is helping dramatically to relieve this problem.

(But) bricks and mortar are not looked upon as a total solution. Ways must be devised to stem the tide of the flow of inmates into the system and to accelerate the discharge of inmates who are prepared to leave the system and reenter society.

We work closely with the court system in North Carolina in affecting the disposition of offenders who enter the correction process. Every effort is being made to encourage the governmental and criminal justice leadership to appropriately divert lesser offenders to locally controlled programs, including the use of fines, restitution, probation, alcohol and drug treatment, public services, mental health programs and work release.

IN RECENT YEARS, critics of present sentencing practices have intensified their efforts to limit broad discretion of judges and of those who implement the sentences imposed by judges. They point out that justice is lost when the length of sentence is related to the individual personality of the sentencing judge. Extreme disparities in sentences bring disrepute to the criminal justice system.

Whatever is done in relation to sentencing and paroling, impact and feasibility studies should be made to insure that new laws and practices do not overload and overwhelm the prisons. Most prisons around the country are experiencing tremendous overloads of prisoners, just as we are. New sentencing laws should not be constructed in ways that increase the overload without providing support resources.

The length of sentences given to felons entering the prison system has a very definite correlation with the number of inmates in the prisons, as does the number of felons admitted as opposed to the misdemeanant admissions. During the last 10 years, the number of felons admitted into the system has more than doubled and the misdemeanant population has decreased by more than one-third.

There is little to encourage us to hope that there will be a reduction in admissions to the prison system before 1985. We are, therefore, faced with the prospect of a continuing upward spiral in our population figures. It is for this reason, plus the fact that there is considerable doubt in professional circles of incarceration alone being a practical deterrent to crime, that we are actively seeking and developing alternatives to incarceration.

A measure implemented within the last few months is the Local Confinement Act of 1977 designed to further reduce the flow of misdemeanants into the state correction system.

Under this program the North Carolina Department of Correction contracts with individual counties having certified jails servicing these offenders.

D

Reed: Judges crowd prisons

CHARLOTTE (AP) — North Carolina's prison system has two "dubious distinctions" — the highest rate of commitment in the nation and the fifth highest number of inmates, the secretary of the state Department of Correction said Monday.

"We're overusing our prison system," the secretary, Amos Reed, told the North Charlotte Rotary Club. He blamed the state's high prison population on "judicial attitudes" that result in imprisonment of many persons instead of fines, probations or placing them in public service jobs.

"Some states don't imprison people convicted of misdemeanors as we do," he said.

On another subject, Reed said in an interview that prison officials would "do the very best we can" to ensure the safety of Joan Little, who escaped from prison last October and who faces extradition from New York to finish a sentence for breaking and entering.

"There is no absolute guarantee for any citizen anywhere, but we will do the very best we can," Reed said. "It's not our staff she's afraid of, it's the inmates."

Reed told the civic club that the rate of imprisonment per 100,000 population is higher in North Carolina than anywhere in the country, but he did not have an exact percentage for the state.

North Carolina's 14,500 inmate population puts the state in fifth place nationally, behind Texas, California, Florida and New York, he said.

Reed told the group that a multimillion-dollar modernization and building program is under way to improve the overcrowded conditions in the state's 79 prisons.

Educational and self-help programs for inmates also are being used to improve the prison system, he said.

Facilities are being built or planned at Salisbury and at the present Caledonia, Odom and McCain prisons. The century-old Central Prison in Raleigh will be replaced, with bids going out in the next few weeks, he said.

Steve Murray

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Bowden
a of the

by Garry Trudeau